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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,494	06/28/2002	Bernd Laudi	23427N1PCT/US	3223
7590 11/20/2003 Martin A Farber 866 United Nations Plaza Suite 473 New York, NY 10017			EXAMINER MEDLEY, MARGARET B	
			ART UNIT 1714	PAPER NUMBER

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/069,494	Applicant(s) LAUDI ET AL.	
	Examiner Margaret B. Medley	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/18/03 & 8/27/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>10/03</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

This response in reply to the amendment dated August 18, 2003 wherein claims 13-21 were amended and to the amendment dated August 27, 2003 wherein claim 22 has been added. The pending claims of record are claims 13-22.

After the interview with applicants' representative on October 15, 2003, applicants' representative instructed the examiner to write the office action because he could not reach agreement with his client.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 13-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "optionally" in claim 13 (and its dependent claims) render the indefinite because the term "consisting" means that the component is required and it is not optionally. The rejection of claim 13 may be overcome by deleting the term "optionally".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-19 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cox 6,458,177 B1 combined with the Merck Index ,Tanner 3,801,292 and Smith et al (Smith) 4,083,697.

Cox teaches a mixture for a fire log comprising paraffin wax and a thickener selected from diatomaceous earth, note the abstract lines 1-8 , column 2, lines 58-61, and column 3, lines 32--38 and claim 2. Cox also teaches that fumed silica can be substituted as a thickener for the diatomaceous earth thickener, note column 3, lines 44-46. Patentee further teaches that the composition may include talc or red iron oxide as a pigment colorant, which can be view as a combustion-promoting additive because it enhances the color of the flame as the composition is being combusted.

The examiner takes the position on record that the combustion improving-additive is an optional component and is not required to be present. The teachings of Cox anticiaptes or in the alternative render obvious the instant claims of record.

The Merck Index is relied on as a teaching reference and teaches the artisan in the art that silicic acid is precipitated silica, noted 8326 on page 1220.

Tanner is relied on as a teaching reference. Patentee teaches a jelly or paste firelighter composition comprising an organic fuel dispersion (paraffin cut, column 6, lines 11-21 and column 1, lines 62-65) in a liquid vehicle, abstract, solidifies upon

combustion providing the motivation to the artisan in the art that the paraffin of Cox are used in firelighters and would produce a gel or solid upon ignition.

Smith is relied on as a teaching reference. Patentee teaches firelighters comprising the particulate solid fuel distributed uniformly throughout the firelighter, note the abstract, providing the motivation to the artisan in the art that for homogenously distributing the silicic acid of Cox throughout the composition to anticipate or in the alternative render obvious the instant claims.

The examiner takes the position on record that the silicic acid of Cox is the precipitated silicic acid of claim 14 as taught by the Merck Index and the silicic acid are broad and would encompass and would anticipate, the pyrogenic silicic acid of claim 15, the hydrophilic acid of claim 16 and the hydrophilic silicic of claim 17 or in the alternative it would be obvious to the artisan in the art to produce the various form of the silicic acid with the reasonable expectation that the silicic acid in its various form would produce the same result in the composition of Cox .

The examiner takes the position on record that the paraffin wax of Cox is broad and would encompass and anticipate the slack wax of claim 18 and the Fischer-Tropsch synthesis paraffin of claim 19 or in the alternative render obvious the waxes of claims 18 and 19..

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox 6,458,177 B1 combined with the Merck Index ,Tanner 3,801,292 and Smith et al (Smith) 4,083,697 as applied to claims 13-19 and 22 above, and further in view of Schreiner et al (Schreiner) 5,713,964.

Applicant further claim metallocene (claim 20) ferrocene aa9calim 21) as the combustion-promoting additive wherein Cox is silent to the said additive.

Schreiner teaches a liquid composition comprising liquid paraffin and ferrocene, abstract and column 2 lines 11-65 and column 7, lines 54-67. Patentee lacks teachings to the silicic acid, but provides the motivation for adding ferrocene to the paraffin composition of Cox that has been thicken with silicic acid to further render claims 20-21 obvious.

The prior art cited but not applied further teaches firelighter of the same nature as claimed by applicants.

Schuster teaches that it has been known in the firelighter art to add silicic acid to a denatured alcohol as a firelighter for coal and wood for a grill or fireplace, column 1, lines 5-11, providing the motivation for adding the silicic acid to the composition of Schreiner to provide a firelighter composition for a grill fireplace.

Hempel at column 3, lines 46-60 provides the teachings that their silica additive suggest silicic acid as the thickening agents of Cox.

The examiner advised applicants that the claims would be allowed with an amendment to claim 13 deleting the term "optionally" in line 6 and adding in place thereof the term "metallocene" from claim 20 to distinguish over the teaching of Cox for a mixture for a fire log comprising paraffin wax and a thickener selected from diatomaceous earth, note abstract lines 1-8, column 2, lines 58-61, and column 3, lines 32--38 and claim 2. Cox also teaches that fumed silica can be substituted as a thickener for the diatomaceous earth, note column 3, lines 44-46. The composition may

include talc or red iron oxide as a pigment colorant that can be considered as a combustion-improving additive since it enhances the color of the flame during combustion. If applicants agreed to the said amendment then claim 20 should be canceled and claim 21 should be amended to depend from claim 21 to place the application in condition for allowance.

Applicant's arguments filed August 18, 2003 and August 28, 2003 have been fully considered but they are not persuasive.

The Smith and Tanner reference are maintained for their teachings as set forth in the above rejection as teaching references for the state of the art at the time of filing of the instant claims.

Applicant's arguments with respect to claims 13-22 have been considered but are moot in view of the new ground(s) of rejection.

The previous rejection of claims 13-21 under the second paragraph of 35 U.S.C. 112 is withdrawn in view of applicants' amendments to the claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Margaret B. Medley
Primary Examiner
Art Unit 1714

MBMedley
November 14, 2003